



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,330	02/20/2002	Michael Schwartz	JUR-PT001.1	7961
3624	7590	01/11/2006	EXAMINER	
VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			TRAN, TUAN A	
			ART UNIT	PAPER NUMBER
			2682	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/079,330	SCHWARTZ ET AL.	
	Examiner	Art Unit	
	Tuan A. Tran	2682	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 9-20 and 29-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-20 and 29-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 9-20 and 29-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skulley et al. (6,449,374).

Regarding claims 9, 29 and 35, Skulley discloses an ear wearable transmitting and receiving device (See fig. 1C), comprising: a speaker module 56 for playing recorded voiced signals (RF signals carrying voice data has been temporarily stored or recorded in order to be reproduced to audio or voice signals) and for directing the played recorded voice signals into the wearing individual's ear; a microphone 60 configured to receive voice signals of a wearing individual; and a housing 12, 22, 40 containing substantially all other components of the ear wearable device other than the speaker module 60 such as a transceiver 22 inherently including a transmitter for amplifying a signal provided to the speaker module 60, and when in typical use the ear wearable device being held in place by the speaker module 60 which is substantially over the ear and the housing lying on and biasing against a top portion of the ear and head connection of the wearing individual and wherein a member 40 extends from the speaker module 60 to a front of the top portion of the ear and head connection and the

Art Unit: 2682

member 40 being connected to the housing (See figs. 1C-D, 1 F-G, 3 A-B and col.3 line 66 to col. 4 line 65). However, Skulley does not explicitly mention that the module speaker is configured to fit substantially inside a concha portion of the ear. Since the speaker module of a headset having a size that can be fitted in a concha portion of the listener's ear is very common in the art (Official Notice taken by the Examiner); therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to configure the speaker module as disclosed by Hahn with the size that can be fitted in the concha portion of the ear for the advantage of allowing greater customization in the fitting of the headset module to the user's ear.

Regarding claims 10 and 31, Skulley discloses as cited in claims 9 and 29. Skulley further discloses the device fits substantially in and around a single ear of the wearing individual (See fig. 1C).

Regarding claims 11 and 32, Skulley discloses as cited in claims 9 and 29. Skulley further discloses when the device is worn by the wearing individual, the housing having an edge at least partially following the back of the single ear (See fig. 1D).

Regarding claims 12-13, 33-34 and 36, Skulley discloses as cited in claims 9, 29 and 35. Skulley further discloses the housing comprises the microphone 60 integrated into an exterior of the housing and extended from the housing (See figs. 1C and 3A).

Regarding claims 14-20 and 30, Skulley discloses as cited in claims 9 and 29. However, Skulley does not explicitly mention that the transceiver 22 utilizing wireless communication protocol such as RF, infrared, Bluetooth, Ethernet or wired connection so that the ear wearable device can communicate indirectly, via base unit (base unit is a

Art Unit: 2682

computer), with other ear wearable devices. Since Skulley does suggest that other transceivers could be used for the device and Official Notice taken by the Examiner that wireless headset utilizing wireless communication protocol such as RF, infrared, Bluetooth, Ethernet or wired connection to link with its associated base unit is common in the art; therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to configure the device as disclosed by Skulley with transceiver utilizing such protocols for the advantage of expanding the capability of the device to various types of communication protocols.

Regarding claim 37, Skulley discloses as cited in claim 35. Skulley further discloses the housing has a lower surface that makes contact with pinna and the lower surface is shaped to at least partially follow the pinna and head connection when worn (See figs. 1 F-G).

Regarding claim 38, Skulley discloses as cited in claim 35. Skulley further discloses the housing is made of a substantially rigid material (See col. 4 lines 9-13, lines 30-31).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Palermo et al. (6,459,882).

### ***Response to Arguments***

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A. Tran whose telephone number is (571) 272-7858. The examiner can normally be reached on Mon-Fri, 10:00AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on (571) 272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2682

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tuan Tran



**DORIS H. TO**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**